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Plaintiffs' Co-Lead Counsel

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC-JSC

**PLAINTIFFS' ADMINISTRATIVE
MOTION PURSUANT TO CIVIL LOCAL
RULE 7-11 RE PARTICIPATING
COUNSEL PERFORMING COMMON
BENEFIT WORK RELATED TO
PLAINTIFFS' RESPONSES TO
DISCOVERY**

Judge: Hon. Vince Chhabria
Courtroom: 4, 17th Floor

This document relates to:

ALL ACTIONS

I. INTRODUCTION

Pursuant to Civil Local Rule 7-11, Plaintiffs in *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-cv-02843 (the “MDL”), move the Court to enter an Order approving Co-Lead Counsel’s request to engage other certain named Plaintiffs’ retained counsel (“Participating Counsel”) to perform Common Benefit Work related to responding to Defendants’ written discovery to named Plaintiffs and anticipated depositions of named Plaintiffs, in accordance with Pretrial Order No. 8: Duties and Authority of Co-Lead Counsel, Dkt. 120, ¶ 17 and Pretrial Order No. 9: Protocol for Common Benefit Work and Expenses, Dkt. 121.

II. STATEMENT OF FACTS

Plaintiffs’ Co-Lead Counsel first requested the ability to authorize Participating Counsel to be involved in representing their clients in discovery during the case management conference on January 8, 2020. Tr. of Proceedings 15:9-17. After a brief discussion, Facebook represented that if the Plaintiffs “want separate lawyers to be present for their depositions in addition to Counsel here, that seems unobjectionable” but that Defendant would object if Participating Counsel “start[ed] propounding discovery.” *Id.* at 16:10-14. After this brief discussion, the Court stated that Plaintiffs’ request would be authorized but asked that Co-Lead Counsel draft and submit a proposed order with some parameters on this issue. *Id.* at 15:9-17.

On January 30, 2020, Co-Lead Counsel provided Facebook with a draft of the proposed order setting out a limited set of circumstances through which Participating Counsel may be authorized for work in this action. Decl. of Cari Laufenberg in Supp. of Pls.’ Admin. Mot. (“Laufenberg Decl.”) ¶ 3. The Parties have since exchanged revisions to this proposed order but are unable to reach agreement. Laufenberg Decl. ¶¶ 4-6. Thus, Co-Lead Counsel submits this administrative motion requesting that the Court enter the proposed order.

III. ARGUMENT

Co-Lead Counsel seeks to permission from the court to authorize Participating Counsel to

assist in: (a) responding to Defendants’ discovery requests for their clients; and (b) representing their clients in depositions, together with Co-Lead Counsel, consistent with Pretrial Order No. 8, Dkt. 120, ¶ 5. Under the proposed order, Participating Counsel may not perform Common Benefit Work other than that specifically requested by Co-Lead Counsel that is related to either (a) or (b) as set forth above. Further, all work shall conform to the requirements for Common Benefit Work set forth in Pretrial Order No. 9, Dkt. 121. Participating Counsel’s receipt of reasonable common benefit attorneys’ fees and reimbursement of costs and expenses shall be subject to Section I of Pretrial Order No. 9, Dkt 121.

The parties disagree regarding Facebook’s proposal to add extraneous provisions to the proposed order that are either already governed by other protocols and/or orders, or are being negotiations. First, Facebook proposed revisions requiring that Co-Lead Counsel “sign all court filings and responses to discovery requests in accordance with the requirements of Rule 11” and “ensure proper preservation, collection, and production of documents in response to any document demands, consistent with all applicable rules of procedure and ethical rules.” Laufenberg Decl. ¶ 4. These requirements overlap with provisions in Pretrial Order No. 8 regarding the Duties and Authority of Co-Lead Counsel. Dkt. 120, ¶ 5 (stating that Co-Lead Counsel have the authority “[t]o propound, seek and respond to discovery, including but not limited to written discovery, the taking or defending of depositions, and motion practice related thereto”). They are also unnecessary in that they seek to impose duties already set out in the Federal Rules of Civil Procedure. Second, Facebook proposed inserting a provision that “only one attorney may object and conduct any direct examination during the course of such depositions.” Laufenberg Decl. ¶ 4. This provision belongs not in the Participating Counsel order but in the deposition protocol. Plaintiffs provided a draft stipulated deposition protocol to Facebook on March 2, 2020, but have yet to receive Facebook’s edits on that draft protocol. Laufenberg Decl. ¶ 7. To avoid any confusion, duplication, and possible conflict—particularly with respect to provisions appropriately addressed through a stipulated deposition protocol, Plaintiffs submit a proposed order that excludes

such provisions from the [Proposed] Participating Counsel order.

IV. CONCLUSION

In light of the foregoing, Plaintiffs respectfully request that the Court grant their motion and enter the proposed order.

Dated: April 13, 2020

Respectfully submitted,

KELLER ROHRBACK L.L.P.

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By: /s/ Lesley E. Weaver
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Plaintiffs' Co-Lead Counsel

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Derek Loeser, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of April, 2020, at Seattle, Washington.

/s/ Derek Loeser

Derek Loeser

CERTIFICATE OF SERVICE

I, Derek Loeser, hereby certify that on April 13, 2020, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Derek Loeser

Derek Loeser